

RECEIPT NUMBER 0.00

TRACKING NUMBER 73667928 CIV

CAUSE NUMBER 201962373

PLAINTIFF: MARTINEZ, NICOLAS

vs.

DEFENDANT: LIBERTY MUTUAL INSURANCE COMPANY

In The 61st  
Judicial District Court of  
Harris County, Texas

CITATION CORPORATE

THE STATE OF TEXAS  
County of Harris

TO: LIBERTY INSURANCE CORPORATION MAY BE SERVED THROUGH  
CORPORATION SERVICE COMPANY

211 E 7TH ST STE 620 AUSTIN TX 78701 - 3218

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION.

This instrument was filed on the 30th day of August, 2019, in the  
above cited cause number and court. The instrument attached describes the claim against you.

**YOU HAVE BEEN SUED;** you may employ an attorney. If you or your attorney do not file a written answer with the  
District Clerk who issued this citation by 10:00 a.m on the Monday next following the expiration of 20 days after you were  
served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This Citation was issued under my hand and seal of said Court, at Houston, Texas, this 5th day of  
September, 2019.

Issued at request of:  
LEAVITT, CHRISTOPHER JERROD  
600 TRAVIS STREET SUITE 7300  
HOUSTON, TX 77002  
TEL: (713) 223-5393  
Bar Number: 24053318



*mail Buren*

MARILYN BURGESS, District Clerk  
Harris County, Texas  
201 Caroline, Houston, Texas 77002  
P.O.Box 4651, Houston, Texas 77210

Generated by: MOMON, RHONDA HWP//11317109

OFFICER/AUTHORIZED PERSON RETURN

I received this citation on the 12th day of September, 2019, at 9:40 o'clock A.M., endorsed  
the date of delivery thereon, and executed it at \_\_\_\_\_,  
(STREET ADDRESS) (CITY)  
in \_\_\_\_\_ County, Texas on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M.,  
by delivering to \_\_\_\_\_, by delivering to its  
(THE DEFENDANT CORPORATION NAMED IN CITATION)  
\_\_\_\_\_, in person, whose name is \_\_\_\_\_,  
(REGISTERED AGENT, PRESIDENT, or VICE-PRESIDENT)  
a true copy of this citation, with a copy of the \_\_\_\_\_ Petition attached,  
(DESCRIPTION OF PETITION, E.G., "PLAINTIFF'S ORIGINAL")  
and with accompanying copies of \_\_\_\_\_.  
(ADDITIONAL DOCUMENTS, IF ANY, DELIVERED WITH THE PETITION)

I certify that the facts stated in this return are true by my signature below on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

FEE: \$ \_\_\_\_\_

By: \_\_\_\_\_  
(SIGNATURE OF OFFICER)

Printed Name: \_\_\_\_\_

Affiant Other Than Officer

As Deputy for: \_\_\_\_\_  
(PRINTED NAME & TITLE OF SHERIFF OR CONSTABLE)

On this day, \_\_\_\_\_, known to me to be the person whose signature  
appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was  
executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public

09/13/19  
J. Smith  
PSCW

8/30/2019 9:07 PM  
Marilyn Burgess - District Clerk Harris County  
Envelope No. 36451863  
By: Cynthia Clausell-McGowan  
Filed: 8/30/2019 9:07 PM

2019-62373 / Court: 061

CAUSE NO. \_\_\_\_\_

NICOLAS MARTINEZ,	§	IN THE DISTRICT COURT OF
<i>Plaintiff</i>	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
LIBERTY MUTUAL INSURANCE	§	_____ JUDICIAL DISTRICT
COMPANY &	§	
LIBERTY INSURANCE	§	
CORPORATION	§	
<i>Defendants</i>	§	JURY TRIAL DEMAND

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW PLAINTIFF Nicolas Martinez ("Plaintiff") and files this Original Petition against Liberty Mutual Insurance Company and Liberty Insurance Corporation ("Defendants") and, in support of thereof, would respectfully show the Court the following:

**I. DISCOVERY CONTROL PLAN AND MONETARY RELIEF**

1. Plaintiff intends to conduct discovery under Level 2. Tex. R. Civ. P. 190.3.
2. Plaintiff seeks monetary relief under \$100,000.00, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney's fees. Tex. R. Civ. P. 47(c)(1). Further, Plaintiff specifies that she seeks a maximum amount of damages that does not exceed the sum or value of \$74,000, exclusive of interest and costs. Removal would be improper because there is no federal question. Plaintiff has not asserted any claims arising under the Constitution, treaties or laws of the United States of America. 28 U.S. Code § 1331. Further, removal would be improper because federal courts lack subject matter jurisdiction over this action, as the matter in controversy does not exceed the sum or value of \$75,000, exclusive of interest and costs. 28 U.S. Code § 1332.

**II. CONDITIONS PRECEDENT**

3. Pursuant to Tex. R. Civ. P. 54, Plaintiff asserts that all conditions precedent to recovery have been performed or have occurred.

**III. PARTIES, JURISDICTION AND VENUE**

**A. PARTIES**

4. Plaintiff Nicolas Martinez is a Texas resident, who resides in 15714 Creekhaven Dr., Houston, Harris County, Texas.

5. Defendants Liberty Mutual Insurance Company is an insurance company doing business in the State of Texas, which may be served through Corporation Service Company at 211 E 7th St. Ste. 620, Austin, TX 78701 - 3218.

6. Defendants Liberty Insurance Corporation is an insurance company doing business in the State of Texas, which may be served through Corporation Service Company at 211 E 7th St. Ste. 620, Austin, TX 78701 – 3218.

**B. JURISDICTION**

7. The Court has subject matter jurisdiction over this cause of action because it involves an amount in controversy in excess of the minimum jurisdictional limits of the Court.

8. The Court has both general and specific personal jurisdiction over Defendants. The Court has general jurisdiction over Defendants, as Defendants has sufficient minimum contacts with and within this State and has purposefully availed itself of the privilege of conducting activities within this State, thus invoking the benefits, protections, and obligations of this State's laws. Defendants' contacts with this State, which are continuous and systematic, include doing business in Texas, selling and delivering insurance products in Texas, entering into contracts for insurance in Texas with Texas residents, insuring property located in Texas, underwriting insurance policies in Texas,

accepting policy premiums in Texas and adjusting insurance claims in Texas. This activity was not the unilateral activity of another party or a third person.

9. Defendants' contacts with Texas, relied upon by Plaintiff, were purposeful and were not random, fortuitous, or attenuated, and are thus subject to the jurisdiction of this State in suits based on its activities. The Court has jurisdiction over Defendants because: (1) Defendants purposefully availed itself of the benefits of conducting activities in Texas, and (2) the cause of action arises from or relates to those contacts or activities.

10. The Court has specific jurisdiction over this matter as it involved the execution, performance, and breach of a Texas insurance contract with Plaintiff, who is a Texas resident, with regards to an insured risk and/or property located in Texas. As a matter of law, Defendants conducted business in this State because, without limitation, Defendants conducted the business of insurance in Texas and committed one or more torts and/or violated the Texas DTPA and/or Insurance Code, in whole or in part in this State, against Plaintiff in Harris County, Texas. Defendants has sufficient and/or minimum contacts with this State, and thus Plaintiff affirmatively assert the Court's exercise of jurisdiction over Defendants comports with "traditional notions of fair play and substantial justice."

**C. VENUE**

11. Venue is proper in Harris County because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County. Tex. Civ. Prac. & Rem. Code § 15.002(a)(1). The property subject to this dispute and which is owned by Plaintiff is located in Harris County. The insurance policy insuring the property was executed in Harris County. The damage to the property resulted from an event or occurrence in Harris County. The resulting insurance claim

that was made by Plaintiff, the property inspection performed by Defendants, and the denial and/or underpayment of the insurance claim by Defendants occurred in Harris County.

#### **IV. FACTUAL BACKGROUND**

12. Nicolas Martinez is a named insured under a property insurance policy issued by Liberty Mutual Insurance Company and Liberty Insurance Corporation. The policy number is \*\*\*9640.

13. Hurricane Harvey caused major wind damage to thousands of homes in the Southeast Texas area. Hurricane Harvey's winds were sufficient to cause damage as evidenced in this claim. Thereafter, Plaintiff's subsequently filed a claim on his insurance policy.

14. Defendants improperly denied and/or underpaid the claim.

15. Defendants conducted a substandard investigation and inspection of the property, prepared a report, which did not include all of the damages that were observed during the inspection, and undervalued the damages observed during the inspection.

16. Specifically, On August 28, 2017, Hurricane Harvey hit the Texas coast, which included Harris County. The impact of this storm caused roof and interior damage to Plaintiff's house. Specifically, the storm lifted multiple shingles, exposing nails. The lifted shingles caused water to enter into the house. As a result, the water stained his ceiling. Thereafter, Plaintiff filed a claim on his insurance policy.

17. Defendants performed an outcome-oriented investigation of Plaintiff's claim. Defendants' (improper) claims handling included Defendants' biased claims adjustment, and an unfair and inequitable evaluation of Plaintiff's losses on the property. In addition, Defendants' claims handling included both an unreasonable investigation and underpayment of Plaintiff's claim.

**V. CAUSES OF ACTION AND ATTORNEY'S FEES**

18. Plaintiff incorporates the foregoing for all purposes.

**A. BREACH OF CONTRACT**

19. Plaintiff and Defendants entered into an insurance contract. Defendants breached this contract by, without limitation, inadequately and/or improperly investigating Plaintiff's insurance claim, wrongfully denying and/or underpaying the claim. Defendants damaged Plaintiff through its actions and/or inactions described herein.

**B. PROMPT PAYMENT OF CLAIMS STATUTE**

20. Defendants' failure to pay for Plaintiff's losses and/ or to follow the statutory time guidelines for accepting or denying coverage constitutes a violation of Section 542.051 *et seq.* of the Texas Insurance Code.

21. In addition to Plaintiff's claim for damages, Defendants' violation of the Tex. Insurance Code entitles Plaintiff to interest and attorneys' fees as set forth in Section 542.060 of the Texas Insurance Code.

**C. BAD FAITH**

22. Defendants is an insurance company and insured Plaintiff's property. Defendants is required to comply with Chapter 541 of the Texas Insurance Code.

23. Defendants violated Section 541.051 of the Texas Insurance Code by, without limitation:

1. Making statements misrepresenting the terms and/or benefits of the policy.

24. Defendants also violated Section 541.060 by, without limitation:

1. Misrepresenting to Plaintiff a material fact or policy provision relating to coverage at issue;

2. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability had become reasonably clear;
  3. Failing to promptly provide to Plaintiff a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromised settlement of a claim;
  4. Failing within a reasonable time to affirm or deny coverage of a claim to Plaintiff or submit a reservation of rights to Plaintiff; and/or
  5. Refusing to pay the claim without conducting a reasonable investigation with respect to the claim;
25. Defendants violated Section 541.061 by, without limitation:
1. Making an untrue statement of material fact;
  2. Failing to state a material fact necessary to make other statements made not misleading considering the circumstances under which the statements were made;
  3. Making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact;
  4. Making a material misstatement of law; and/or
  5. Failing to disclose a matter required by law to be disclosed.
26. Defendants knowingly committed the acts complained of. As such, Plaintiff is entitled to exemplary and/or treble damages pursuant to Texas Insurance Code Section 541.152(a)-(b).

**D. ATTORNEYS' FEES**

27. Plaintiff engaged the undersigned attorneys to prosecute this lawsuit against Defendants and agreed to pay reasonable attorneys' fees and expenses through trial and any appeal.

28. Plaintiff is entitled to reasonable and necessary attorney's fees pursuant to Texas Civil Practice and Remedies Code Sections 38.001-38.003 because an attorney that represents Plaintiff presented the claim to Defendants, and Defendants did not tender the just amount owed before the expiration of the 30th day after the claim was presented.

29. Plaintiff further prays that he be awarded all reasonable attorneys' fees incurred in prosecuting his causes of action through trial and any appeal pursuant to Sections 541.152 and 542.060 of the Texas Insurance Code.

**VI. TEX. R. CIV. P. 193.7 NOTICE.**

30. Pursuant to Tex. R. Civ. P. 193.7, the undersigned hereby notifies all parties and counsel of record that Plaintiff may introduce into evidence at the time of trial or pre-trial, those documents produced by all parties in response to requests for production and/or requests for disclosure in this matter.

**VII. JURY DEMAND**

31. Pursuant to Tex. R. Civ. P. 216, Plaintiff hereby demands trial by jury and has tendered the appropriate fee.

**VIII. PRAYER**

32. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and that, after due process of law, Plaintiff have judgment against Defendants for actual damages, together with exemplary damages, statutory damages, treble damages, statutory interest, pre-judgment interest, post-judgment interest, attorneys' fees, costs of suit, and for all such other and further relief, both general and special, in law and in equity, to which Plaintiff may be justly entitled.



Respectfully submitted,

**THE BUZBEE LAW FIRM**

By: /s/ Anthony G. Buzbee

Anthony G. Buzbee  
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Facsimile: (713) 223-5909

AND

**LAW OFFICES OF MANUEL SOLIS, PC**

By: /s/ Stephen R. Walker

Stephen R. Walker  
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**ATTORNEYS FOR PLAINTIFF**



**Marilyn Burgess**  
 2019-62373 Court: 061  
 HARRIS COUNTY DISTRICT CLERK

8/30/2019 9:07:42 PM  
 Marilyn Burgess - District Clerk  
 Harris County  
 Envelope No: 36451863  
 By: CLAUSELL, CYNTHIA  
 Filed: 8/30/2019 9:07:42 PM

201 Caroline | P.O. Box 4651 | Houston, Texas 77210-4651 | 832-927-5800 | www.hcdistrictclerk.com

### Request for Issuance of Service

CASE NUMBER: \_\_\_\_\_ CURRENT COURT: \_\_\_\_\_

Name(s) of Documents to be served: PLAINTIFF'S ORIGINAL PETITION

FILE DATE: August 30, 2019 Month/Day/Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

Issue Service to: LIBERTY MUTUAL INSURANCE COMPANY

Address of Service: 211 East 7th Street Suite 620

City, State & Zip: Austin, TX 78701 -3218

Agent (if applicable) CORPORATION SERVICE COMPANY

TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the proper Box)

- |  |   |  |   |
|--|---|--|---|
| <input checked="" type="checkbox"/> Citation                   | <input type="checkbox"/> Citation by Posting          | <input type="checkbox"/> Citation by Publication | <input type="checkbox"/> Citations Rule 106 Service |
| <input type="checkbox"/> Citation Scire Facias                 | Newspaper _____                                       |  |   |
| <input type="checkbox"/> Temporary Restraining Order           | <input type="checkbox"/> Precept                      | <input type="checkbox"/> Notice                  |   |
| <input type="checkbox"/> Protective Order                      |   |  |   |
| <input type="checkbox"/> Secretary of State Citation (\$12.00) | <input type="checkbox"/> Capias (not an E-Issuance)   | <input type="checkbox"/> Attachment              |   |
| <input type="checkbox"/> Certiorari                            | <input type="checkbox"/> Highway Commission (\$12.00) |  |   |
| <input type="checkbox"/> Commissioner of Insurance (\$12.00)   | <input type="checkbox"/> Hague Convention (\$16.00)   | <input type="checkbox"/> Garnishment             |   |
| <input type="checkbox"/> Habeas Corpus                         | <input type="checkbox"/> Injunction                   | <input type="checkbox"/> Sequestration           |   |
| <input type="checkbox"/> Subpoena                              |   |  |   |
| <input type="checkbox"/> Other (Please Describe) _____         |   |  |   |

(See additional Forms for Post Judgment Service)

#### SERVICE BY (check one):

- |   |   |
|---|---|
| <input type="checkbox"/> ATTORNEY PICK-UP (phone) _____   | <input type="checkbox"/> E-Issuance by District Clerk<br>(No Service Copy Fees Charged)   |
| <input type="checkbox"/> MAIL to attorney at: _____       | Note: The email registered with EfileTexas.gov must be used to retrieve the E-Issuance Service Documents.<br>Visit www.hcdistrictclerk.com for more instructions. |
| <input type="checkbox"/> CONSTABLE                        |   |
| <input type="checkbox"/> CERTIFIED MAIL by District Clerk |   |

☒ CIVIL PROCESS SERVER - Authorized Person to Pick-up: COURT RECORDER Phone: 713227335

☐ OTHER, explain \_\_\_\_\_

Issuance of Service Requested By: Attorney/Party Name: Christopher Leavitt Bar # or ID 24053318

Mailing Address: 600 Travis, Ste 7300, Houston, TX 77002

Phone Number: 713-223-5393